

ATTACHMENT 9

July 18, 2002

Ms. Felecia Greer
Executive Secretary
Maryland Public Service Commission
6 St. Paul Street, 16th Floor
Baltimore, Maryland 21202

**Re: Complaint of CloseCall America, Inc. Against Verizon
Maryland, Inc.; Comments of the Office of People's Counsel**

Dear Ms. Greer:

The Office of People's Counsel ("People's Counsel") urges the Public Service Commission ("Commission") to set a hearing for the complaint by CloseCall America, Inc. ("CloseCall") against Verizon Maryland, Inc. ("Verizon"). CloseCall petitioned the Commission "to direct [Verizon] to provide wholesale access to voice messaging and digital subscriber line ('DSL') services that can be provided on loops that are also used for competitive local exchange carrier ('CLEC') services." Complaint of CloseCall America, Inc. to the Public Service Commission of Maryland (May 2, 2002) ("Complaint"). The Complaint also alleges that when Verizon terminates the voice messaging service of its former customers (i.e., who switch local telephone service to a CLEC), Verizon does so without reasonable warning or alternatives.

OPC wants to ensure that customers with voice messaging who switch their local telephone service from Verizon to a CLEC receive proper notice and a smooth transition. In addition, while People's Counsel does not wish to enter into certain issues involving a dispute most properly kept between competing telecommunications carriers, People's

Counsel does want to assure the Commission that it possesses the authority to protect Maryland consumers and ensure quality of service in Maryland, notwithstanding Verizon's arguments to the contrary. Therefore, People's Counsel wishes to provide its opinion and advice on two issues only in connection with CloseCall's complaint: (1) protecting Verizon's voice messaging consumers who switch from Verizon to a CLEC; and (2) ensuring that the Commission understands that it does possess the authority to regulate Verizon's business practices where such practices involve consumer protection or quality of service in Maryland, regardless of the subject matter.

I. The Maryland Public Service Commission Should Promulgate Rules Requiring Telecommunications Providers to Provide Notice of Cessation of any Telecommunications Service

When consumers switch from Verizon to a CLEC for local telephone service, CloseCall alleges that the consumers' voice messaging service is suddenly terminated and that Verizon provides no "reasonable warning or service alternatives," which practice "causes substantial consumer disruption and inconvenience and can be particularly punitive and unfair to our new customers." Complaint at p. 3. People's Counsel agrees that such practices are detrimental to consumers and can be avoided. People's Counsel respectfully requests that the Commission consider implementing rules providing consumers with adequate notice of any termination of service so that these consumers can close out their old account and seek and secure a new service.

Notification rules should include the following elements. Notice rules should apply to any telecommunications company providing services to consumers, and these rules should require thirty (30) days' notice of cessation of service. A second notice, provided ten (10) days prior to cessation of service, should also be provided. Notice should be provided to customers and the Commission. If the telecommunications company terminating its service is providing resold telecommunications service, the provider should notify every telecommunications company providing the exiting telecommunications company with resold telecommunications service. (Notice also should be provided to ILECs providing the exiting telecommunications company with unbundled network elements ("UNEs"), if UNEs are part of a telecommunications service provided to the exiting telecommunications company's customers.) The notice to consumers should include: (1) the date on which the service will cease; (2) information on how to contact the exiting telecommunications provider by telephone in order to obtain information needed to establish service with another provider; and (3) an explanation of how customers may receive a refund on any unused service. These rules should specify that they supercede any contractual provisions on cessation of service.

II. The Maryland Public Service Commission Does Possess the Authority to Protect Consumers and Quality of Service of Telecommunications Providers, Regardless of the Subject Matter

The Commission has the authority, regardless of the subject matter, to protect consumers of telecommunications services and to ensure quality of telecommunications services with respect to consumer protection or quality of service issues involving voice messaging or DSL services. In this regard, People's Counsel supports CloseCall's Complaint and rejects Verizon's arguments to the contrary.

In its Complaint, CloseCall argues: "The Commission has sufficient legal authority and a statutory mandate to curtail Verizon's improper practice of tying voice messaging and DSL services to its local exchange service." Complaint at p. 7. Then CloseCall goes on to cite and discuss several sections of the Public Utility Companies ("PUC") Article of the Maryland Code in support of its argument. People's Counsel takes no position on the question of whether Verizon's practice of tying voice messaging and DSL to local service is inappropriate; however, People's Counsel agrees with CloseCall that the Commission possesses the authority to regulate business practices affecting consumer protection and quality of service, including business practices involving voice messaging and DSL.

People's Counsel agrees with CloseCall, as stated on page 7 of its Complaint, that, pursuant to §2-113 of the PUC Article: "the Commission has 'substantial latitude' to ensure that public utilities operate in a manner that serves the public interest" Complaint at p. 7. And People's Counsel agrees with CloseCall's argument that the PUC Article "compels the Commission to use this authority to 'promote adequate, economical and efficient delivery of utility services in the State without unjust discrimination.'" Complaint at p. 8 (citing PUC Article §2-113). Finally, People's Counsel agrees with CloseCall's argument that "the Commission's actions should protect consumers by 'producing affordable and reasonably priced basic local exchange service,' ensuring the 'quality, availability, and reliability of telecommunications services throughout the State,' and 'encourag[ing] the development of competition.'" Complaint at p. 8 (citing PUC Article §4-301). In summary, People's Counsel agrees with CloseCall's arguments that the Commission does possess broad authority to protect telecommunications consumers and quality of telecommunications services in Maryland.

Verizon's response to CloseCall's arguments is that the Commission does not have any authority over voice messaging or DSL because these services are interstate and consequently under Federal Communications Commission ("FCC") regulation. Verizon Maryland Inc.'s Answer to the Complaint of CloseCall America, Inc. (May 28, 2002), at pp. 7-11 and 14-16. Verizon also argues that the FCC's policy towards voice messaging and DSL is to deregulate these services. *Ibid.* Furthermore, Verizon argues that other states have decided not to provide the relief requested by CloseCall, for the same reasons (argued above) that the Commission is precluded from acting on CloseCall's Complaint. People's Counsel believes that Verizon's argument totally avoids the issue of whether

Verizon's business practices in providing voice messaging or DSL services may be regulated by the Commission where consumer protection and service quality are involved.

As discussed above, People's Counsel believes that the Commission may regulate Verizon's business practices relating to voice messaging and DSL services to the extent necessary to protect consumers and ensure quality of service, regardless of the subject matter of the business practices in question. The Commission has plenary jurisdiction over Verizon with respect to quality of service and customer protection issues arising out of Verizon's relationship with its Maryland retail telecommunications customers. Furthermore, DSL and voice messaging services are provided over physical facilities that are within Maryland and are used to provide local services.

III. Conclusion

People's Counsel respectfully requests that the Commission set a hearing for CloseCall's Complaint. People's Counsel submits that the Commission does possess the authority to hear and act upon CloseCall's Complaint, insofar as it involves consumer protection and quality of service. Finally, People's Counsel respectfully urges the Commission to use this opportunity to promulgate rules requiring telecommunications carriers to provide notice of cessation of any telecommunications service.

Respectfully submitted,

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RTM/ds

cc: Carville Collins, Esq., Piper Rudnick (for CloseCall America, Inc.)
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